

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

VINCE KWIATKOWSKI, individually and on)  
behalf of all others similarly situated, )

Plaintiffs, )

vs. )

Case No.: 05-CV-299 DRH

TEMPLETON GROWTH FUND, INC. and )  
TEMPLETON GLOBAL ADVISORS )  
LIMITED, )

Defendants. )

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**  
**THE COMPLAINT : RULE 12(b), FED. R. CIV. P.**

Defendants Templeton Growth Fund, Inc. and Templeton Global Advisors Limited move to dismiss the Complaint herein on the ground that the Securities Litigation Uniform Standards Act, 15 U.S.C. § 77p(b) and § 78bb(f)(1) ("SLUSA"), bars the maintenance of Plaintiffs' state law claims in any State or Federal Court and, accordingly, they must be dismissed.

**THE LAW**

SLUSA, in relevant part, provides:

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 77p(b) and § 78bb(f)(1).

On April 5, 2005, the Seventh Circuit in Kircher v. Putnam Funds Trust, 2005 WL 757255,<sup>1</sup> held that actions based on allegations identical to those in this action<sup>2</sup> are “covered class actions” and involved a “covered security” within the meaning of SLUSA, and that SLUSA requires that they be dismissed, stating:

We hold that SLUSA is as broad as § 10(b) itself and that limitations on private rights of action to enforce § 10(b) and Rule 10b-5 do not open the door to litigation about securities transactions under the state law. Plaintiffs’ claims are connected to their own purchases of securities and thus are blocked by SLUSA, whose preemptive effect is not confined to knocking out state-law claims by investors who have *winning* federal claims, as plaintiffs suppose. It covers both good and bad securities claims—*especially* bad ones. The judgments of the district courts are reversed, and the cases are remanded [to the United States District Court] with instructions to undo the remand orders and dismiss plaintiffs’ state-law claims. (emphasis supplied)

Under that binding Seventh Circuit authority, this Court should now dismiss this action.

\* \* \*

As to personal jurisdiction, Defendant Templeton Global Advisors Limited adopts the motion filed in the State court, a copy of which was attached to the Notice of Removal as Exhibit C.

### **CONCLUSION**

The Complaint must be dismissed because SLUSA bars its maintenance in any State or Federal court, including this Court.

Dated: April 26, 2005

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<sup>1</sup> A copy of the Opinion is attached as Exhibit A.

<sup>2</sup> A copy of the Complaint in this action is attached to the Notice of Removal as Exhibit B. A copy of the Complaint in one of the actions involved in Kircher with allegations of wrongdoing identical to those in this action (except for the identities of the defendants), is attached hereto as

Respectfully submitted,

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- and -

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ATTORNEYS FOR DEFENDANTS  
TEMPLETON GROWTH FUND, INC. AND  
TEMPLETON GLOBAL ADVISORS  
LIMITED.

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Exhibit B.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26<sup>th</sup> day of April, 2005, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys listed below:

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**ATTORNEYS FOR PLAINTIFFS**

The undersigned hereby certifies that on this 26<sup>th</sup> day of April, 2005, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, upon the following non-registered participant:

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**ATTORNEYS FOR PLAINTIFFS**

s/ Lisa M. Wood